

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant PRIME Service Agreement
Negotiated Service Agreement

Docket No. MC2017-71

Market Dominant Product Prices
Inbound Market Dominant PRIME Service Agreement
(MC2017-71)
Negotiated Service Agreement

Docket No. R2017-3

PUBLIC REPRESENTATIVE COMMENTS ON
REQUEST OF THE UNITED STATES POSTAL SERVICE TO
ADD INBOUND MARKET DOMINANT PRIME SERVICE AGREEMENT
TO THE MARKET DOMINANT PRODUCT LIST,
TYPE 2 RATE ADJUSTMENT

(January 6, 2017)

BACKGROUND

The Public Representative hereby provides comments pursuant to the Commission's Notice Initiating Dockets.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service request to add Inbound Market Dominant PRIME Service Agreement to the Market Dominant Product List, and notice of Type 2 Adjustment.² The PRIME Tracked Service Agreement (Agreement) is "a multilateral agreement between postal operators about the exchange of letter post items weighing up to 2 kilograms, tendered as PRIME Tracked items and branded with a common logo." Request at 1.

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings. December 24, 2016.

² Request of United States Postal Service Request to Add Inbound Market Dominant PRIME Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, December 24, 2016 (Request).

The Postal Service entered into this Agreement on December 21, 2016. *Id* at 2. The Agreement enters into force on February 1, 2017. The Postal Service requests that Inbound Market Dominant PRIME Service Agreement be added as a new product pursuant to 39 U.S.C. §§ 3622(c)(10) and 39 C.F.R. §3010.40 *et seq. Id.*

According to the Postal Service this Agreement is an agreement with certain postal operators for the timely return of scans for which the postal operator is eligible for an enhanced payment in addition to the basic payment. *Id* at 2. The Postal Service asserts that it will provide any necessary information about mail flows from the parties of the Agreement within the course of the annual compliance review process and does not intend to provide any specific data collection plan. *Id* at 8. The Postal Service also requests that they be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3) because the Agreement concerns a product that is already being measured.³

COMMENTS

Pursuant to 39 U.S.C. §§ 3622(c)(10) the Commission must determine whether the PRIME Service Agreement improves the net financial position of the Postal Service or enhances the performance of operational functions, will not cause unreasonable harm to the marketplace, and will be available on public and reasonable terms to similarly situated mailers. The Postal Service asserts that this Agreement will improve the net financial position, enhance operational performance, and will not harm the marketplace. Notice at 10. The Postal Service also asserts that there are no similarly situated entities involved in this Agreement. *Id.* The Public Representative has reviewed the Agreement and supporting financial model and concludes that the PRIME Service agreement meets the requirements of 39 U.S.C. §§ 3622(c)(10)⁴. However, the Public Representative has some concerns as discussed below.

The Postal Service claims that the Agreement enhances the performance of operational functions. To aid the Commission in evaluating such claims, the Commission's rules require the "identification of each component of the agreement

³ The Commission granted similar exceptions in Docket No. R2011-6, PRC Order No. 876, at 8.

⁴ The Public Representative assumes the Postal Service's response to Chairman's Information Request 1, Question 2 will not affect the cost coverage calculation in the Postal Service's financial model..

expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement”. 39 CFR 3010.42(g). The Postal Service asserts that the “signing of the PRIME Tracked Service Agreement creates an incentive for the Postal Service to improve mail processing and transportation because the agreement provides for remuneration for timely return of scans concerning PRIME Tracked Items.” While this assertion is likely accurate, it fails to support the Postal Service’s claim that the Agreement enhances the performance of operational functions. The Postal Service only identifies the incentive created by the Agreement to enhance the performance of operational functions, but does not identify enhancements that are expected to result from the Agreement.

The Postal Service did not file its request with the Commission prior to its accession to the Agreement. Consequently, even if the Commission found that prices set forth in the Agreement are inconsistent with 39 U.S.C. §§ 3622(c)(10), the Postal Service would still be required to provide PRIME tracked service to signatories to the Agreement.⁵ The Agreement does allow parties to withdraw from the Agreement at any time; however, it takes three full calendar months for the withdrawal from the Agreement to take effect. Attachment 2, at 3. Consequently, the Postal Service could not withdraw from the Agreement in time to avoid providing PRIME tracked service for inbound items. Therefore, the Public Representative urges the Commission to require the Postal Service to file a request with the Commission prior to signing any such agreements in the future.

The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

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Public Representative

⁵ The Agreement does not require that the Postal Service send any PRIME tracked items.

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